## UNITED STATES PATENT AND TRADEMARK OFFICE

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| 09/455,932 | 12/07/1999 | TETSUYA OKANO | 1341.1035/JD | 5754 |

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DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

# Office Action Summary

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

## Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)☐ Responsive to communication(s) filed on _December 24, 2002_ .

2a)☒ This action is **FINAL**.      2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)☒ Claim(s) _1-6_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-6_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

## Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on _24 December 2002_ is: a)☒ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All  b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

### *Drawings*

1.      The corrected or substitute drawings were received on December 24, 2002. These

drawings are acceptable.

### *Claim Rejections - 35 USC § 102*

2.      The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) do not apply to the examination of this application as the application being examined

was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C.

122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment

by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3.      Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No.

6,128,657 to Okanoya et al.

Okanoya et al. discloses a relaying apparatus for use in a network system with a plurality

of client and server terminals providing service via a network (see column 1, lines 13-17), as

claimed in claim 1, comprising:

a plurality of route load measuring units (see column 2, lines 54-55, Note that the state

management agent means are the route load measuring units.), each provided in the vicinity of

the server terminals (see column 2, lines 52-55 and Fig. 1) and each measures a respective load

in route up to one client terminal having issued a request for service (see column 8, lines 26-30,

33-35, and 38-41; Note that the operating status is defined to include load distribution data as

stated on lines 12-13 of column 8.); and

a selecting unit which selects one server terminal as a destination of the request for

service from a client terminal based on the route load measured by the route load measuring units

(see column 10, lines 61-65; Note that the distribution processor is the selecting unit.).

In reference to claim 2, Okanoya et al. further discloses:

a storing unit which stores the route load measured at a pre-specified time interval by

each of the route load measuring units up to a client terminal (see column 6, lines 18-20); and

when a request for service is received from a client terminal, the selecting unit selects a

server terminal as a destination of the request for service based on the route load stored in the

storing unit (see column 10, lines 61-65).

In reference to claim 3, Okanoya et al. further discloses:

each route load measuring unit that monitors the operating states of respective server

terminal (see column 2, lines 57-60); and

when a request for service is received from a client terminal, the selecting unit selects a

server terminal as a destination of the request based on the route load and the operating states

monitored by the route load measuring units (see column 10, lines 61-65).

4.      Claims 4-6 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No.

6,327,622 to Jindal et al.

Jindal et al. discloses a relaying apparatus for use in a network system, that is formed

with a plurality of client terminals (see Fig. 1) and server terminals divided into several groups

(see Fig. 3 and column 9, lines 50-54) providing services to the client terminals via a network, as

claimed in claim 4, comprising:

a plurality of route load measuring units each provided with respect to each of the groups

(see column 9, lines 65-67, column 10, lines 1-8 and Fig. 3; Note that the "IRMO", "IMO" and

"status objects" together make up the route load measuring units.) each measures a respective

load in the route up to a client terminal having issued a request for service (see column 8, lines

15-18); and

a selecting unit, which selects one route load measuring unit as a primary destination of

the request for service (see column 10, lines 9-12 and Fig. 3; Note that the "central server" is the

selecting unit.) based on the route load measured by the route load measuring units (see column

5, lines 10-14); and

wherein the route load measuring unit selects one server terminal out of several server

terminals as the secondary destination of the request for service (see Fig. 3; Note that in Fig. 3

each "IRMO" points to multiple servers, therefore it is clear that one server terminal will be

selected based upon the results in the route load measuring unit.).

In considering claim 5, Jindal et al. further discloses:

the route load measuring units monitor the operating states of the respective server

terminal (see column 3, lines 5-9); and

the route load measuring unit selects a server terminal based on the operating states when

selecting a secondary destination of the request for service (see column 2, lines 51-53; Note that

the "selected policy" is the operating state of the server terminal.).

Jindal et al. discloses a relaying apparatus for use in a network system, which network

system is formed with a plurality of client terminals (see Fig. 1) and server terminals divided into

several groups (see Fig. 3 and column 9, lines 50-54) providing services to the client terminals

via a network, as per claim 6, comprising:

a plurality of route load measuring units each provided with respect to each of the groups,

each measures the respective load in the route up to one client terminal having issued a request

for service (see column 9, lines 65-67, column 10, lines 1-8 and Fig. 3; Note that the "IRMO",

"IMO" and "status objects" together make up the route load measuring units.) and monitors the

operating state of the server terminals in each group (see column 3, lines 5-9); and

a selecting unit, which selects one route load measuring unit as a primary destination of

the request for service from one client terminal (see column 10, lines 9-12 and Fig. 3; Note that

the "central server" is the selecting unit.) based on the route load measured and the operating

state monitored by the route load measure units (see column 2, lines 51-53 and lines 57-59; Note

that the "selected policy" includes the operating state of the server terminal.); and

wherein the route load measuring unit selects one server terminal out of several server

terminals as the secondary destination of the request for service based on the operating state (see

Fig. 3; Note that in Fig. 3 each "IRMO" points to multiple servers, therefore it is clear that one

server terminal will be selected based upon the results in the route load measuring unit.).

*Claim Rejections - 35 USC § 103*

5.      The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

6.      Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okanoya et al.

in view of Jindal et al.

Although the system disclosed by Okanoya et al. shows substantial features of the

claimed invention (discussed above), it fails to disclose:

dividing the server terminals into several groups, and selecting one of the server terminals

as a secondary destination of the request for service.

However, Jindal et al. teaches dividing the server terminals into several groups and

selecting a secondary destination of the request for service (as discussed above). Therefore,

given the teaching of Jindal et al., a person having ordinary skill in the art would have

recognized the advantages of modifying Okanoya et al. by dividing the server terminals into

groups and selecting a secondary destination so as to provide for priority routing.

### *Response to Arguments*

7.      Applicant's arguments filed December 24, 2002 have been fully considered but they are

not persuasive.

8.      In reference to claim 1, *Okanoya et al. does not teach selection of a server as a*

*destination of the request for service based on the network load.*

8.1     Okanoya et al. is directed at a system in which the operating status of the servers is

measured and monitored by state management agents (see column 8, lines 7-9), in which the

status information includes load distribution data (see column 8, lines 12-13). This information

is then used to determine the destination of the request for service (see column 10, lines 61-65).

It is apparent that the load distribution data that is collected by the state management agents is

the network load. Therefore, it is evident that Okanoya et al. teaches the limitations of claim 1.

9.      In reference to claims 2 and 3, *Okanoya et al. does not teach claim 1 and therefore does*

*not teach the limitation of the dependent claims.*

9.1     As stated above, Okanoya et al. teaches the limitations of claim 1, and furthermore teach

the limitations of claims 2 and 3. Okanoya et al. discloses a storing unit which stores the route

load measured by each of the route load measuring units up to a client terminal (see column 6,

lines 18-20); and the selecting unit selects a server terminal as a destination of the request for

service based on the route load stored in the storing unit (see column 10, lines 61-65).

Furthermore, Okanoya et al. discloses each route load measuring unit that monitors the

operating states of respective server terminal (see column 2, lines 57-60); and when a request for

service is received from a client terminal, the selecting unit selects a server terminal as a

destination of the request based on the route load and the operating states monitored by the route

load measuring units (see column 10, lines 61-65). Hence, Okanoya et al. teaches the limitations

of the claims.

10.     In reference to claims 4 and 6, *Jindal et al. does not teach distributing a request based on*

*the network load.*

10.1    In Jindal et al. column 8, lines 15-18 state that "a status object may retrieve multiple

pieces of information concerning an applications instance's load." Jindal et al. further explains

that the "status object determines the load on the instance or server (column 8, lines 53-54).

Therefore the information retrieved is the network load. Jindal et al. further discloses that the

load is collected and analyzed and used in determining a preferred server (column 5, lines 10-

14). Therefore, Jindal et al. teaches distributing a request based on the network load.

11.      In reference to claim 5, *Jindal et al. does not teach claim 4, and therefore does not teach*

*the limitation of the dependent claim.*

11.1     As stated above, Okanoya et al. teaches the limitations of claim 4, and furthermore teach

the limitations of claim 5. Okanoya et al. discloses route load measuring units that monitor the

operating states of the respective server terminal (see column 3, lines 5-9); and the route load

measuring unit selects a server terminal based on the operating states when selecting a secondary

destination of the request for service (see column 2, lines 51-53; Note that the "selected policy"

is the operating state of the server terminal.). Hence, Okanoya et al. teaches the limitations of

the claim.

12.      In reference to claims 4-6, *Jindal et al. fails to teach the load measuring unit, which*

*measures a respective load, and there is no teaching or suggestion to combined Jindal et al. with*

*Okanoya et al.*

12.1     In Jindal et al. column 8, lines 15-18 state, "a status object may retrieve multiple pieces

of information concerning an applications instance's load." Jindal et al. further explains that the

"status object determines the load on the instance or server (column 8, lines 53-54). Therefore,

the status objects, which make up the route load measuring unit, along with the "IRMO" and

"IMO", measure the respective load, and Jindal et al. teaches this limitation of the claim.

        In response to applicant's argument that there is no suggestion to combine the references,

the examiner recognizes that obviousness can only be established by combining or modifying the

teachings of the prior art to produce the claimed invention where there is some teaching,

suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

1992). In this case, the motivation to combine the two references is to provide for priority

routing. For instance, the grouping of servers could be based upon which servers have a higher

priority.

## *Conclusion*

13.    **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mareisha N. Winters whose telephone number is (703) 305-7838.

The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone numbers for the

organization where this application or proceeding is assigned are (703) 746-7239 for official

communications, (703) 746-7240 for non-official communications and (703) 746-7238 for After

Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 308-3900.

mnw
January 13, 2003

KRISNA LIM
PRIMARY EXAMINER